

MORIHARA LAU & FONG LLP

A LIMITED LIABILITY LAW PARTNERSHIP

March 19, 2010

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PUBLIC UTILITIES
COMMISSION

HAND DELIVER

The Honorable Chairman and Members of the
Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, HI 96813
Attention: Ji Sook Kim, Esq.

RE: Docket No. 2009-0049 – In the Matter of the Application of Wai'ola O Moloka'i, Inc. ("WOM"), for review and approval of rate increases; revised rate schedules; and revised rules: Response to County of Maui's Statement of Probable Entitlement

Dear Chairman, Commissioners and Commission Staff:

Pursuant to the Stipulated Regulatory Schedule (Exhibit "A") contained in the Order Approving Proposed Procedural Order, as Modified, filed on November 6, 2009, WOM hereby submits its Response to the Statements of Probable Entitlement filed by the County of Maui on March 11, 2010.

Hawaii Revised Statutes ("HRS") § 269-16(d), in pertinent part, states:

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission shall within one month after the expiration of the nine-month period render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. [Emphasis added.]

In its Statement of Probable Entitlement, filed on March 11, 2010, the County of Maui ("County") argues that WOM "is not entitled to the rate increases requested," but fails to state what the County believes that WOM is probably entitled to based on the evidentiary record to date. The purpose for statements of probable entitlement at this stage of the process is to assist the Commission in determining interim rates for the utility based on the evidentiary record currently before it in the event the Commission is unable to render a final decision within the statutory time period.

The Statement of Probable Entitlement filed by the County iterates what the County believes are issues or items on which WOM has not yet met its burden of proof. Instead of setting forth the extent to which the County believes WOM has met its burden of proof, and, therefore what WOM is probably entitled to, the County merely states that "an evidentiary

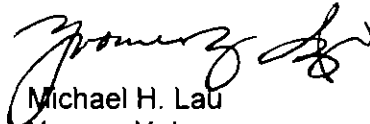
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hearing is necessary to fully develop the record and vet these issues[.]” The County's letter does not constitute a statement of probable entitlement and is unhelpful for this purpose.

Moreover, in violation of the Stipulated Prehearing Order, the County attempts to introduce evidence through its Statement of Probable Entitlement instead of through the information request process or direct testimony. Numerous averments made therein regarding Molokai Properties, Limited, land use development plans, and the design of the WOM system are not in the evidentiary record to date. This is especially disturbing, given the fact that the County elected to not submit any direct testimony or exhibits. See County of Maui's Statement Regarding Direct Testimony, filed on January 13, 2010.

Based on the foregoing, WOM requests that the Commission disregard the County of Maui's Statement of Probable Entitlement, filed on March 11, 2010.

Very truly yours,



Michael H. Lau
Yvonne Y. Izu

Morihara Lau & Fong LLP
Attorneys for Wai'ola O Moloka'i, Inc.

cc: Consumer Advocate
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